

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FRANK MARTINCIC,

Plaintiff,

Case Number: 18-11670

v.

COMMISSIONER OF SOCIAL SECURITY,

Honorable Thomas L. Ludington
Magistrate Judge Stephanie Dawkins Davis

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT, AND REVERSING COMMISSIONER'S
FINDINGS, AND REMANDING TO COMMISSIONER FOR FURTHER
PROCEEDINGS**

On May 25, 2018, Plaintiff, Frank Martincic, filed a complaint against the Commissioner of the Social Security Administration. ECF No. 1. Plaintiff is appealing the denial of his disability benefits. *Id.* Plaintiff filed a motion for summary judgment on November 8, 2018, arguing the Commissioner's final decision was not supported by substantial evidence and the Commissioner applied the incorrect legal standard. ECF No. 8. On January 18, 2019, Defendant filed a cross motion for summary judgment, arguing there was sufficient evidence for the Commissioner to find Plaintiff's condition had improved and highlighting the difference between a treating physician's medical opinions and treatment notes. ECF No. 18.

On August 9, 2019, Magistrate Judge Davis filed a report recommending the Court grant Plaintiff's motion for summary judgment, deny Defendant's motion for summary judgment, reverse the findings of the Commissioner, and remand the case to the Commissioner for further proceedings. ECF No. 19. Although the Magistrate Judge's report explicitly stated that the parties to this action could object to and seek review of the recommendation within fourteen days of

service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation, ECF No. 19, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's motion for summary judgment, ECF No. 13, is **GRANTED**.

It is further **ORDERED** that the Commissioner's motion for summary judgment, ECF No. 18, is **DENIED**.

It is further **ORDERED** that the case is **REMANDED** to the Commissioner for further proceedings consistent with Judge Davis's report and recommendation.

Dated: August 29, 2019

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge